

## **POTPOURRI NOTICE**

### **Department of Environmental Quality Office of Environmental Assessment**

#### **Advance Notice of Proposed Rulemaking Solicitation of Comments on New Source Review Rules for Prevention of Significant Deterioration Program (AQ246F & AQ246L) (LAC 33:III.509) (0411Pot1)**

On December 31, 2002, the United States Environmental Protection Agency published a final New Source Review (NSR) rule revising the regulations that implement the Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) provisions of the Clean Air Act. To be approvable under the State Implementation Plan (SIP), states implementing Part C (PSD permit program in §51.166) or Part D (nonattainment NSR permit program in §51.165) must include EPA's December 31, 2002, changes as minimum program elements. States must adopt and submit revisions to their Part 51 permitting programs implementing these minimum program elements no later than January 2, 2006 (67 FR 80240).

The LDEQ is developing a revision to the regulations that proposes to adopt the federal rule (AQ246F) and includes revisions put forward by the department (AQ246L). According to the Administrative Procedure Act [R.S. 49:953(F)(1)], the department is required to propose a rule that differs from a federal rule separately from a proposed rule that is identical to a federal rule. The department requests comments on these two draft rules prior to beginning formal rulemaking. Separate correspondence should be submitted for comments on AQ246F and AQ246L, or each comment should clearly reference AQ246F or AQ246L, as appropriate.

EPA's NSR revisions (hereinafter Federal NSR Reform rule) include five major elements:

- Baseline Emissions — changes the method for determining the source's emissions before a change is made (the baseline against which emissions increases are measured);
- Applicability Test — changes the method for estimating the emissions after the change;
- Clean Unit Exclusion — disregards increases from emissions units that have installed controls within the last 10 years;
- Pollution Control Project Exclusion — exempts certain projects that will cause a significant increase in emissions of one pollutant, but reduce emissions of another pollutant; and
- Plantwide Applicability Limits — allows facilities to establish a cap on emissions and trade increases and decreases under the cap, without installing controls on new or modified emissions units.

Louisiana's draft rule (AQ246L) differs from the Federal NSR Reform rule as follows:

The Federal NSR Reform rule allows all existing emissions units to use the "actual-to-projected-actual" test, predicting what the unit's actual emissions will be for five years after the project, and subtracting emissions increases that the source predicts will be due to production increases that the facility could have accommodated without the change (i.e., demand growth exclusion). Louisiana's draft rule deletes the demand growth exclusion.

The Federal NSR Reform rule provides automatic designation as a “Clean Unit” for any emissions unit that has installed Best Available Control Technology (BACT) or has met the Lowest Achievable Emission Rate (LAER) within the last 10 years, and allows sources to demonstrate that other controls are comparable to BACT or LAER to receive Clean Unit status. Louisiana’s draft rule reduces the 10-year timeframe to 5 years and does not allow sources to demonstrate that other controls are comparable to BACT or LAER to receive Clean Unit status. In order to obtain Clean Unit status, an NSR permit must be issued to the source.

For proposed projects as well as projects remaining within the contemporaneous period, when the project involves multiple emissions units or multiple pollutants, only one baseline period may be used to determine the baseline actual emissions with respect to all pollutants and all affected emissions units. The Federal NSR Reform rule allows different 24-month periods to be selected for each pollutant.

In Louisiana’s draft rule, the exclusions for temporary and permanent clean coal technology demonstration projects and for the reactivation of a very clean coal-fired electric utility steam generating units have been omitted from the definition of “major modification” because they are outdated. Louisiana’s draft rule eliminates “malfunctions” from the definition of “projected actual emissions.” The Federal NSR Reform rule allows owners and operators to project malfunction emissions.

Louisiana’s draft rule adds consequences for underestimation of projected actual emissions. For projects originally determined not to result in a significant net emissions increase, if an owner or operator subsequently reevaluates projected actual emissions and determines that project has resulted or will now result in a significant net emissions increase, the owner or operator must either request that the administrative authority limit the potential to emit of the affected emissions unit(s) as appropriate via federally enforceable conditions such that a significant net emissions increase will no longer result, or submit a revised PSD application within 90 days.

Louisiana’s draft rule expands on routine maintenance, repair and replacement (RMRR). In determining whether an activity at a facility constitutes RMRR, the owner or operator must consider the nature, extent, purpose, frequency, and cost of the work to be performed. RMRR activities are narrow in scope, do not result in increased capacity, occur with regular frequency, and involve limited expense.

Louisiana’s draft rule also reflects non-substantive wording and/or structural changes to improve readability (e.g., alphabetized definitions).

The LDEQ requests all interested parties submit comments on the draft rules prior to rulemaking. In addition, the LDEQ specifically requests response to the following questions.

1. What are the expected environmental benefits and/or disbenefits of the rules under consideration?
2. What is the potential compliance costs for the rules under consideration?
3. Any other information the responder desires to be in the record.

Comments are due no later than 4:30 p.m., January 20, 2005, and should be submitted to Keith Jordan, Box 4313, Baton Rouge, LA 70821-4313 or to FAX (225) 219-3309 or by e-mail

to keith.jordan@la.gov. Persons commenting should reference these document as AQ246F and AQ246L. The draft regulations are available on the Internet at <http://www.deq.louisiana.gov/planning/regs/index.htm>. Copies of the draft regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ246F and AQ246L.

The draft regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

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